

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts
Michael A. Fischer, Senior Attorney

DATE: August 28, 2003

SUBJECT: Public Access to Trial Court Budget Information and Processes (amend
Cal. Rules of Court, rules 6.5, 6.6, 6.45, and 6.702) (Action Required)

Issue Statement

The procedures for developing and adopting the judicial branch budget have been changed over time in an ongoing effort to provide increased public and employee representative access to trial court budget information and processes. The existing budget information and process rules need to be revised to reflect these changes. In addition, the prior piecemeal adoption of rules concerning public access to council meetings and public access to the budget process has resulted in rules that should be better organized.

Specifically, the council has taken four different actions concerning public access to council meetings and the budget process:

1. Effective January 1, 1999, the council adopted rules concerning the notice and agenda of council meetings and the conduct of meetings (rules 6.5 and 6.6);
2. Effective January 1, 2001, the council adopted rule 6.702 concerning maintenance of and public access to budget and management information, which included provisions concerning the conduct of meetings at which trial court budget matters were discussed;
3. Effective January 1, 2002, the council adopted rule 6.45 establishing the Judicial Branch Budget Advisory Committee; and
4. Effective July 1, 2003, the council adopted staff's recommendation that the council review more detailed trial court budget information at its future business meetings.

Recommendation

Staff recommends that the Judicial Council, effective January 1, 2004, amend rules 6.5, 6.6, 6.45, and 6.702 to

- Add information specifying the normal schedule of budget meetings. Meetings include a budget priority meeting, a meeting to approve the proposed budget, and a budget allocation meeting (rule 6.5(d)).
- Specify the materials presented at the council's budget approval meeting (rule 6.5(g)(2)(C)).
- Require the Judicial Branch Budget Advisory Committee to seek input from the public, including designated trial court employee representatives, on budget priorities before it makes recommendations to the Judicial Council (rule 6.45(d)(1)(C)).
- Require the Administrative Office of the Courts to provide informational sessions on trial court budgets for the general public and designated employee representatives on such subjects as:
 - Description and timing of the budget development process
 - Availability of budget information
 - Authority of a trial court to reallocate funds. (Rule 6.702(l).)
- Move provisions of rule 6.702(h) concerning Judicial Council Budget meetings to the general rules on Judicial Council meetings (rules 6.5 and rule 6.6) in order to make the provisions more accessible.

Rationale for Recommendation

The proposed amendments incorporate the changed financial procedures into the rules of court and make other changes designed to improve public information and access to the judicial branch budget process. The council has previously made the budget process a part of the rules because this is a matter of great public interest. The Legislature has also mandated that certain provisions involving public access to the judicial branch budget process be the subject of rules.¹

Alternative Actions Considered

Because the subject matter involved is already part of the rules of court and is mandated, in part, by statute, any changes would be to the rules of court. The action proposed is consistent with and helps implement already adopted council policy. No alternative actions were, thus, considered.

¹ Government Code section 77206 provides, in part:

“(e) The Judicial Council shall adopt rules to provide for reasonable public access to budget allocation and expenditure information at the state and local level.

“(f) The Judicial Council shall adopt rules ensuring that, upon written request, the trial courts provide, in a timely manner, information relating to the administration of the courts, including financial information and other information that affects the wages, hours, and working conditions of trial court employees.”

Comments From Interested Parties

The proposal was circulated for comment as part of the Spring, 2003 RUPRO circulation. A total of six comments were received. Five comments, including the Court Executives Advisory Committee, supported the proposal as submitted. One court executive sought changes to the proposed language.

Those supporting the proposal as submitted, without comment, are:

- The Court Executives Advisory Committee;
- Dennis E. Murray, Presiding Judge, Tehama Superior Court;
- Linda Finn, Deputy Executive Office, Ventura Superior Court;
- Robert Gerard, President, Orange County Bar Association; and
- Thomas A. Pistone, Attorney, Irvine.

Stephen Love, Executive Office, San Diego Superior Court, raised four issues concerning the language of the proposal. These matters are:

1. The 10-day time to respond to requests for information should be 30 days (see rule 6.702(e)).
2. The amount charged for copies should be the same as the court charges for other copies (see rule 6.702(f)).
3. The rule should be clarified to state the salary information of individually identifiable employees should not be released (see rule 6.702(a)(2)).
4. The rule should be amended to clarify that the trial court executive officer should get advance notice of budget information and an opportunity to speak to the council in the same manner as employee representatives.

Three of the points raised by Mr. Love concern language of the existing rule and not language changed by the proposal. The first two issues were significant items of negotiation with the employee representatives when rule 6.702 was originally adopted and should not be changed without full discussion and opportunity for comment. There does not appear to be significant problems in the courts concerning these matters.

On the third issue, Mr. Love notes that the provision could be interpreted to require the trial court to release Budget Form 7A, which lists every employee and that employee's salary. He notes that the AOC model personnel rules state that individual salaries will not be disclosed, but only the salary range.

The issue concerning specific salary information does not appear to come within the definition of either matters which are within the scope of representation under

Government Code section 71634 or other matters that are referred to in that section.²

There does not appear to be anything in section 71634 that would mandate the release of specifically identified salary information nor does it appear that this issue has been raised as a concern under current operation of the rule. If this matter is to be considered for adding to the rule, it should first be circulated for comment.

On the fourth point, trial court executive officers are already provided notice as part of the budget process concerning budget information and an opportunity to provide input to the council. There are many mechanisms for this including the court executive members of the council and the Judicial Branch Budget Advisory Committee and the Court Executives Advisory Committee. If this matter is to be considered for adding to the rule, it should first be circulated for comment.

Implementation Requirements and Costs

There are no expected costs for implementation of this proposal because it (1) puts in rule form a process that is already in operation and (2) reorganizes without substantive change existing rule provisions.

² Section 71634 provides:

- (a) The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. However, the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.
- (b) In view of the unique and special responsibilities of the trial courts in the administration of justice, decisions regarding the following matters shall not be included within the scope of representation:
 - (1) The merits and administration of the trial court system.
 - (2) Coordination, consolidation, and merger of trial courts and support staff.
 - (3) Automation, including, but not limited to, fax filing, electronic recording, and implementation of information systems.
 - (4) Design, construction, and location of court facilities.
 - (5) Delivery of court services.
 - (6) Hours of operation of the trial courts and trial court system.
- (c) The impact from matters in subdivision (b) shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of trial court employees. The court shall be required to meet and confer in good faith with respect to that impact.
- (d) The trial court shall continue to have the right to determine assignments and transfers of trial court employees; provided that the process, procedures, and criteria for assignments and transfers shall be included within the scope of representation.

Rules 6.5, 6.6, 6.45, and 6.702 of the California Rules of Court are amended, effective January 1, 2004, to read:

Rule 6.5. Notice and agenda of council meetings

- (a) **[Generally]** The Judicial Council ~~shall~~ meets at the call of the Chief Justice no fewer than four times a year.
- (b) **[Meeting schedule]** The Administrative Office of the Courts ~~shall~~ must publish a regular annual schedule that states the planned date, purpose, and location of each meeting. Additional meetings may be scheduled as necessary.
- (c) **[Notice of business meetings]** “Business meetings” are council meetings at which a majority of voting members are present to discuss and decide matters within the council’s jurisdiction. The Administrative Office of the Courts ~~shall~~ must give public notice of the date, location, and agenda of each business meeting at least seven days before the meeting. The notice ~~shall~~ must state whether the meeting is open or closed. If the meeting is partly closed, the notice ~~shall~~ must indicate which agenda items are closed. A meeting may be conducted without notice in case of an emergency requiring prompt action.
- (d) **[Budget meetings]** A “budget meeting” is that portion of any business meeting at which trial court budgets are to be discussed. The Administrative Office of the Courts must provide notice of a budget meeting in the same manner as any other business meeting. Budget meetings normally are scheduled as follows:
- (1) A budget priority meeting, normally in February of each year, at which the Judicial Council adopts budget priorities for the trial courts for the budget year that begins July 1 of the next calendar year.
- (2) A meeting at which the proposed budget is approved, normally in August of each year, at which the Judicial Council takes action on the following:
- (A) Staff recommendations on trial court budget change requests for the next fiscal year;
- (B) A total baseline budget for each trial court for the next fiscal year;
and
- (C) Any proposed changes in funding for a trial court.
- (3) A budget allocation meeting, normally at the first council meeting after the state’s budget is enacted, at which the Judicial Council approves the final budget allocations for each trial court, including approved budget adjustments.

1
2 (4) Other meetings following substantive changes to the trial court portion of
3 the proposed state budget made by the Governor in the proposed
4 Governor's budget or by a committee or house of the Legislature, at
5 which the Judicial Council will take appropriate action, if any.
6

7 **(e) [Form of notice]** The notice and agenda for council meetings ~~are~~ must be
8 posted at the Administrative Office of the Courts and on the council's Web site
9 (www.courtinfo.ca.gov). In addition, the notice and agenda for budget
10 meetings must be provided to designated employee representatives who have
11 submitted a written request to the Administrative Office of the Courts
12 (attention Secretariat Office).
13

14 **(e)(f) [Contents of agenda]** The agenda ~~shall~~ must contain a brief description of
15 each item to be considered at the council meeting. All items are classified as
16 discussion items, consent items, or informational items.
17

18 (1) *(Consent items deemed approved)* All consent items are deemed approved
19 without further action at the adjournment of each council meeting.
20

21 (2) *(Moving consent items to discussion agenda)* A consent item ~~shall~~ must
22 be moved to the discussion agenda if a council member so requests by
23 giving 48 hours' advance notice to the Executive and Planning
24 Committee, or if the Chief Justice moves the item to the discussion
25 agenda.
26

27 **(f)(g) [Meeting materials]**
28

29 (1) (General materials) General ~~M~~meeting materials ~~shall~~ must be distributed
30 to council members at least three business days before the date of the
31 meeting, except in extraordinary circumstances. The Administrative
32 Director may make copies of materials available to the media or attendees
33 in advance of a business meeting and may specify that the materials are
34 provided upon agreement by the recipient that they will be kept
35 confidential until the council has discussed or acted upon specified items.
36 The council may charge a fee to cover the costs of replicating and mailing
37 these materials to members of the public.
38

39 (2) (Budget materials)
40

41 (A) (When available) Materials involving trial court budgets must be
42 made available at least five business days before the meeting if they
43 have been distributed by that time to the members of the council.
44 All other materials involving trial court budgets must be made

1 available at the same time as the information is distributed to the
2 council.

3
4 (B) (*Distribution*) Materials must be made available by posting on the
5 council's Internet Website and by distribution to designated
6 employee representatives who have submitted a written request to
7 the Administrative Office of the Courts (attention Secretariat
8 Office).

9
10 (C) (*Contents at the budget approval meeting*) Material involving trial
11 court budget proposals presented at the budget approval meeting
12 must include proposed statewide requests for funding, existing trial
13 court baseline budgets, adjustments proposed for any trial court
14 baseline budget, and any court specific budget change requests.

15
16 ~~(g)~~**(h)** **[Circulating orders]** Between business meetings, the council may act by
17 circulating order on urgent matters if the Chief Justice or the Administrative
18 Director approves. Prior public notice of a proposed circulating order is not
19 required. Each circulating order adopted by the council ~~shall~~ must be included
20 on the agenda for the next business meeting as an information item.

21 22 **Rule 6.6. Judicial Council meetings**

23
24 **(a) [Open meeting policy]** Business meetings are open to the public unless they
25 are closed under subdivision (b) of this rule. Other meetings, such as
26 orientation, planning, and educational meetings, may be made open to the
27 public at the discretion of the Chief Justice. The Chief Justice may seek a
28 recommendation from the Executive and Planning Committee on whether all
29 or part of any meeting should be open or closed. Any discussion or decision of
30 the full council at a business meeting regarding a trial court budget allocation
31 must take place in an open meeting of the council, except for an executive
32 session as provided in subdivision (b).

33
34 **(b) [Closed sessions]** The Chief Justice may close all or part of a business meeting
35 because of the nature of the meeting or of matters to be discussed. The
36 following matters will ordinarily be discussed in closed session:

- 37
38 (1) A personnel matter or a discussion of the character, competence, or
39 physical or mental health of an individual;
40 (2) Claims or litigation in which the Judicial Council has an interest;
41 (3) Contract, labor, or legislative negotiations;
42 (4) The purchase, sale, or lease of real property;
43 (5) Security plans or procedures;
44 (6) Allegations of criminal or professional misconduct; and

1 (7) Discussions protected by the attorney-client privilege.
2

3 (c) **[Conduct at meeting]** Members of the public who attend open meetings shall
4 remain orderly. The Chief Justice may order the removal of any disorderly
5 persons.
6

7 (d) **[Requests to speak-general]** The Executive and Planning Committee, in its
8 discretion, may allow a member of the public to speak at a business meeting.
9 Unless the Chief Justice waives this requirement, any member of the public
10 who wishes to speak at a business meeting shall submit a request of no more
11 than two pages to the chair of the Executive and Planning Committee by
12 delivering it to the Administrative Office of the Courts at least four business
13 days before the meeting.
14

15 (1) (*Contents of the request*) The request shall include the following:
16

- 17 (A) A description of the agenda item to be addressed;
- 18 (B) A specific recitation of the proposed statement with an explanation
19 of its relevance to the agenda item and the reasons it would be of
20 benefit to the council in its deliberations;
- 21 (C) The name, residence, and occupation of the person asking to speak
22 and, if applicable, the name, address, and purpose of the agency or
23 organization that the speaker represents;
- 24 (D) If available, telephone and fax numbers and e-mail address of the
25 person asking to speak and, if applicable and available, telephone
26 and fax numbers of the agency or organization that the speaker
27 represents;
- 28 (E) The words "Request to Speak at Judicial Council Meeting"
29 displayed prominently in letters at least one-quarter-inch high on the
30 envelope containing the request; and
- 31 (F) A copy of any written materials the speaker proposes to distribute at
32 the meeting.
33

34 (2) (*Notice of decision*) The Executive and Planning Committee shall respond
35 to the request at least two business days before the meeting. The
36 committee may grant the request in part or whole, request additional
37 information, circulate any written materials, or take other action it deems
38 appropriate.
39

40 **(e) [Presentation of information on trial court budget matters]**
41

42 (1) (*Presentation of written information*) Any designated employee
43 representative has a right to provide written information on trial court
44 budget allocations to the council.

1
2 (2) (Oral presentation) Any designated employee representative who wishes
3 to make an oral presentation to the Judicial Council must make a written
4 request to the Administrative Office of the Courts (attention Secretariat
5 Office) no later than 24 hours before the meeting unless the issue has
6 arisen within the last five business days before the meeting in which case
7 the written request may be made on the day of the meeting.
8

9 (3) (Limit on number and time) The Chief Justice or his or her designee may
10 limit the number and time of speakers in order to avoid cumulative
11 discussion.
12

13 ~~(e)~~(f) **[Video recording, photographing, and broadcasting at meeting]** The
14 Chief Justice may permit video recording, photographing, or broadcasting of a
15 meeting. Any such video recording, photographing, or broadcasting is subject
16 to regulations that ensure the meeting's security and dignity. A request to
17 record, photograph, or broadcast a council meeting must be received by the
18 Chief Justice at least two business days before the meeting.
19

20 ~~(f)~~(g) **[Minutes as official records]** The Secretary of the Judicial Council shall
21 prepare written minutes of each council meeting for approval at the next
22 council meeting. When approved by the council, the minutes constitute the
23 official record of the meeting.
24

25 **Rule 6.45. Judicial Branch Budget Advisory Committee**

26
27 **(a) – (c) * * ***
28

29 **(d) [Duties and responsibilities]** The committee provides advice and advocacy to
30 ensure that the judicial branch budget as developed and adopted is consistent
31 with Judicial Council goals. In carrying out this duty, the committee must:
32

33 (1) Provide recommendations to the Judicial Council on budget priorities to
34 guide the development of the budget for the fiscal year presently being
35 developed. The committee considers all relevant factors including:
36

37 (A) Recommendations from other advisory committees on budget
38 priorities;
39

40 (B) Recommendations from the trial and appellate courts;
41

42 (C) Input from the members of the public including any designated trial
43 court employee representative;
44

1 (D) The fiscal condition of the state;

2
3 ~~(D)~~(E) Other factors and trends affecting the judicial system and the
4 state; and

5
6 ~~(E)~~(F) The progress of the courts and other judicial branch agencies
7 in meeting the goals established by the Judicial Council.

- 8
9 (2) Make recommendations, as appropriate, on budget policies and
10 procedures to the Judicial Council and the Administrative Office of the
11 Courts.
12
13 (3) Work with the Judicial Council and the Administrative Director of the
14 Courts in advocating for the budget through the executive and legislative
15 processes.
16
17 (4) Further participate in the budget development process, as directed by the
18 Administrative Director of the Courts.
19
20

21 **Rule 6.702. Maintenance of and public access to budget and management**
22 **information**

23
24 (a) **[Maintenance of information by ~~county trial court systems~~]** The trial court
25 ~~system~~ of each county ~~shall~~ must maintain for a period of three years from the
26 close of the fiscal year to which the following relate:

- 27
28 (1) Official documents of the ~~county trial court system~~ pertaining to the
29 approved ~~county trial court system~~ budget allocation adopted by the
30 Judicial Council and actual final year-end trial court revenue and
31 expenditure reports as required in budget procedures issued by the
32 Administrative Office of the Courts to be maintained or reported to the
33 council, including but not limited to budget allocation, revenue, and
34 expenditure reports;
35
36 (2) Records or other factual management information on matters which are
37 within the scope of representation as defined in Government Code section
38 71634 unless distribution is otherwise precluded by law; and
39
40 (3) Records or other factual management information on other matters
41 referred to in Government Code section 71634 unless distribution is
42 otherwise precluded by law.
43

1 **(b) [Maintenance of information by the Administrative Office of the Courts]**

2 The Administrative Office of the Courts ~~shall~~must maintain for a period of
3 three years from the close of the fiscal year to which the following relate:

- 4
- 5 (1) Official approved budget allocations for each ~~county~~ trial court ~~system~~;
- 6
- 7 (2) Actual final year-end trial court revenue and expenditure reports required
8 by budget procedures issued by the Administrative Office of the Courts to
9 be maintained or reported to the council that are received from the ~~county~~
10 trial courts ~~systems~~ including but not limited to budget revenues and
11 expenditures for each ~~county~~ trial court ~~system~~;
- 12
- 13 (3) Budget priorities as adopted by the council; and
- 14
- 15 (4) Documents concerning ~~county~~ trial court ~~system~~ budgets considered or
16 adopted by the council at council business meetings on ~~county~~ trial court
17 ~~system~~ budgets.
- 18

19 **(c) [Legislative priorities or mandates]** The information maintained under
20 ~~subdivisions (a) and (b)~~ ~~shall~~must indicate, to the extent known, the
21 Legislative requirements the funding is intended to address, if any; and any
22 itemization of the funding allocation by purpose, program or function, and
23 item of expense.

24

25 **(d) [Public access]**

- 26
- 27 (1) Each ~~county~~ trial court ~~system~~ ~~shall~~must, upon written request, make
28 available to the requesting person those documents required to be
29 maintained under subdivision a of this rule.
- 30
- 31 (2) The Administrative Office of the Courts ~~shall~~must, upon written request,
32 make available to the requesting person those documents required to be
33 maintained under subdivision b of this rule.
- 34

35 **(e) [Time for response]** Information requested under this rule ~~shall~~must be made
36 available within 10 business days of receipt of the written request for
37 information relating to the current or immediate previous fiscal year.
38 Information relating to other fiscal years ~~shall~~must be made available within
39 20 business days of receipt of the written request for information. If the
40 information requested is not within the scope of this rule, the Administrative
41 Office of the Courts or the ~~county~~ trial court ~~system~~ ~~shall~~must so inform the
42 requesting party within 10 business days of receipt of the written request.

43

- 1 (f) **[Costs]** The Administrative Office of the Courts and the ~~county trial court~~
2 ~~system~~ may charge a reasonable fee to cover any cost of copying any
3 document provided under this rule. The amount of the fee ~~shall~~ must not
4 exceed the direct cost of duplication. A recognized employee organization and
5 a ~~county trial court system~~ may provide for a different amount in their
6 memorandum of understanding.
7
- 8 (g) **[Preparation of reports not required]** This rule does not require the council,
9 the Administrative Office of the Courts, or any ~~county trial court system~~ to
10 prepare any budgetary, revenue, or expense report or documentation that is not
11 otherwise expressly required to be prepared by this rule or any other provision
12 of law or rule of court.
13
- 14 (h) **[Budget meeting]** ~~The provisions in this subdivision shall apply to that~~
15 ~~portion of any full council meeting at which county trial court system budgets~~
16 ~~are to be discussed. These provisions do not apply to other meetings such as~~
17 ~~orientation, planning, or educational meetings.~~
18
- 19 (1) ~~The council shall provide notice of the meeting at least five business days~~
20 ~~prior to the meeting.~~
21
- 22 (2) ~~The council shall make available at least five business days prior to the~~
23 ~~meeting all information concerning county trial court system budgets that~~
24 ~~has been distributed to the council by that time.~~
25
- 26 (3) ~~The council shall make available all other information concerning county~~
27 ~~trial court system budgets that is distributed to the council at the same~~
28 ~~time as that information is distributed to the council.~~
29
- 30 (4) ~~Any discussions or decisions of the full council at its business meetings~~
31 ~~regarding county trial court system budget allocations shall take place in~~
32 ~~open meetings of the council except for executive sessions regarding~~
33 ~~pending litigation.~~
34
- 35 (5) ~~Any designated employee representative has a right to provide written~~
36 ~~information on county trial court system budget allocations to the council.~~
37
- 38 (6) ~~Any designated employee representative who wishes to make an oral~~
39 ~~presentation to the council shall make a written request to the~~
40 ~~Administrative Office of the Courts (attention Secretariat Office) no later~~
41 ~~than 24 hours before the meeting unless the issue has arisen within the~~
42 ~~last five business days before the meeting in which case the written~~
43 ~~request may be made on the day of the meeting. The Chief Justice or his~~

1 or her designee may limit the number and time of speakers in order to
2 avoid cumulative discussion.
3

4 ~~(7) The notice and information required to be provided by this subdivision~~
5 ~~shall be provided to designated employee representatives who have~~
6 ~~submitted a written request to the Administrative Office of the Courts~~
7 ~~(attention Secretariat Office) to be notified and provided information and~~
8 ~~shall also be posted on the council's Internet Web site.~~
9

10 **(i)—[Effect on other rules]** This rule is not intended to repeal, amend or modify
11 the application of any rule adopted by the council prior to the effective date of
12 this rule. To the extent that any other rule is contrary to the provisions of this
13 rule, this rule ~~shall apply~~ applies.
14

15 ~~(j)~~**(i) [Public Records Act]** The information required to be provided by subdivisions
16 (a) and (b) of this rule ~~shall must~~ be interpreted consistently with the
17 requirement that the same information be provided under the Public Records
18 Act (beginning with section 6250 of the Government Code), and the terms
19 have the same meaning as under that Act. This rule ~~shall~~ does not require the
20 disclosure of information which would not be subject to disclosure under that
21 Act.
22

23 ~~(k)~~**(j) [Internal memoranda]** Nothing in this rule ~~shall requires~~ disclosure of
24 internal memoranda unless otherwise required by law.
25

26 ~~(l)~~**(k) [Rights of exclusive bargaining agent]** Nothing in this rule is intended to
27 restrict the rights to disclosure of information otherwise granted by law to a
28 recognized employee organization.

29 **(l) [Informational sessions]** The Administrative Office of the Courts will provide
30 informational sessions and materials on trial court budgets for the general
31 public and designated employee representatives. The information will include
32 the following areas, among others:
33

34 (1) Description and timing of the budget development process, including
35 decisions made at each phase of the cycle, and how budget priorities are
36 determined;
37

38 (2) Availability of budget information including the type of information
39 available, when it is available, and how it can be obtained; and
40

41 (3) The authority of a trial court to reallocate funds between budget program
42 components.